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**FISCAL IMPACT STATEMENT**

**LS 6644**

**BILL NUMBER:** HB 1003

**NOTE PREPARED:** Mar 13, 2012

**BILL AMENDED:** Mar 10, 2012

**SUBJECT:** Public Access Issues.

**FIRST AUTHOR:** Rep. Crouch

**FIRST SPONSOR:** Sen. Holdman

**BILL STATUS:** Enrolled

**FUNDS AFFECTED:** X GENERAL  
X DEDICATED  
FEDERAL

**IMPACT:** State

**Summary of Legislation:** This bill has the following provisions:

*Electronic Meetings:* It allows a member of the governing body of any public agency of the state to participate in a meeting of the governing body by electronic communication only if:

- (1) the meeting meets all other requirements of the Open Door Law; and
- (2) a majority of the governing body adopts a policy regarding the use of meetings by electronic communication.

It provides that if a meeting by electronic communication is conducted, the governing body is required to:

- (1) have the greater of two members or one-third of the governing body physically present at the meeting place; and
- (2) take only roll call votes.

It provides that unless a policy adopted by the governing body provides otherwise, a member who participates in a meeting by electronic communication:

- (1) is considered to be present at the meeting;
- (2) must be counted for purposes of establishing a quorum; and
- (3) may vote at the meeting.

It requires each member of the governing body to physically attend at least one meeting annually.

It specifies that a governing body may adopt a policy that allows the public to attend meetings conducted by

electronic communication at a public place and where a member is physically present and participates by electronic communication, excluding executive sessions.

It requires a governing body to post the governing body's electronic meeting policy on the Internet web site of the governing body or public agency.

It specifies that the electronic meeting law does not affect a governing body's right to exclude the public from an executive session conducted by electronic communication.

*Repeal of Individual Statutory Authority:* It repeals the individual statutory authorizations for the following state entities to have meetings by electronic communication:

- (1) State Ethics Commission.
- (2) Indiana Bond Bank Board of Directors.
- (3) Indiana Public Retirement System Board of Trustees.
- (4) Board for Depositories.
- (5) Education Savings Authority Board of Directors.
- (6) State board of trustees or a committee of the state board of trustees of Ivy Tech Community College of Indiana, Vincennes University, Ball State University, Indiana State University, Indiana University, Purdue University, and University of Southern Indiana.
- (7) Commission for Higher Education.
- (8) State Workforce Innovation Council.
- (9) Boards, committees, or commissions administered by the Professional Licensing Agency.
- (10) Department of Financial Institutions Governing Board.
- (11) Regional Services Council.

*Change to Annual Meeting Schedule:* Changes the number of annual meetings the following state entities are required to conduct:

- (1) The State Budget Committee.
- (2) The State Employees Appeals Commission.
- (3) The Board for Depositories.
- (4) The Commission for a Drug Free Indiana.

*Electronic Media:* It adds electronic media to the definition of "record" for purposes of the Public Records Law.

*Public Works Division Solicitations:* It eliminates a requirement that the Public Works Division of the Department of Administration solicit sealed bids for public works projects by sending notices by mail and posting notices on a bulletin board in the agency's office.

*Valuable Metal Dealers:* It requires the State Police Department to publish the following on the State Police Internet web site:

- (1) The forms to be used by valuable metal dealers when purchasing valuable metal.
- (2) A list that describes valuable metal products that are particularly susceptible to theft.
- (3) The statutes and rules adopted by the Superintendent of the State Police Department concerning the regulation of valuable metal dealers.

*Public Access and Open Door Laws:* It requires a public agency to: (1) allow inspection or copying; or (2)

make copies; of a public record within a reasonable time after the request is received by the agency.

It provides that a court may impose a civil penalty against: (1) an officer of a public agency or an individual employed in a management-level position with a public agency; or (2) the public agency; for violating the Open Door Law with specific intent to violate the law if the plaintiff obtained an advisory opinion from the Public Access Counselor (PAC) before filing an action.

It provides that a court may impose a civil penalty against an officer, management-level employee, or the public agency for violating the public records law if the officer, management-level employee, or agency: (1) continues to deny a request for a public record after the PAC has issued an advisory opinion that instructs the agency to allow access to the public record; and (2) denies the request with the specific intent to unlawfully withhold a public record that is subject to disclosure.

It provides that an individual or agency could be subject to a civil penalty if the individual intentionally charges a copying fee that the individual knows exceeds the amount set by statute, fee schedule, ordinance, or court order.

It provides that a court may not impose a civil penalty unless the PAC has issued an advisory opinion that instructs the public agency to allow access to the public record before the lawsuit is filed.

It provides that it is a defense to the imposition of a civil penalty under this section for a violation of the Open Door Law or Public Records Law if the individual acted in reliance on an opinion of the public agency's legal counsel or an opinion of the Attorney General.

It provides that a court may impose a civil penalty of: (1) not more than \$100 for the first violation; and (2) not more than \$500 for any additional violations. It also provides that a court may: (1) impose only one civil penalty against an individual in an action even if the court finds that the individual committed multiple violations; and (2) impose another civil penalty against the individual in a separate action.

It provides that if an officer of a state or local government agency orders a management-level employee to: (1) not give proper notice of a public meeting or executive session; or (2) deny or interfere with a person's request to inspect or copy a public document; the employee is not subject to a civil penalty for violating the statute.

It provides that the civil penalty provisions imposed for violation of the Public Records Law do not apply to any matter regarding the work product of Legislative Services Agency or the individual members and partisan staffs of the General Assembly.

*Request for Notices:* It provides that if the governing body of a local government agency adopts a policy, the agency shall provide notice to anyone (other than news media) that makes an annual request for notice by: (1) transmitting the notice by electronic mail; or (2) posting the notice on the agency's Internet web site (if the agency has an Internet web site).

It provides that a court may not declare a governmental action void for failure to give notice by electronic mail or posting on the local government agency's web site if the agency made a good faith effort to comply with the statute.

*Exclusions:* It provides that a public agency may withhold personal information from public disclosure

regarding an individual less than 18 years of age who participates in an activity conducted or supervised by a state educational institution, including personal information regarding the individual's parent or guardian. It provides that a public agency has discretion as to whether to disclose a public record requested by an offender containing personal information relating to a judge, law enforcement officer, or family member of a judge or law enforcement officer.

*Review of Public Records In Camera:* It requires (rather than allows) a court to review public records in camera to determine whether redaction of the records violates the Public Records Law.

*Education Fund for Public Access Counselor Program:* It creates an education fund for a program administered by the Public Access Counselor to train public officials and educate the public on the rights of the public and the responsibilities of public agencies under the Public Access Laws.

**Effective Date:** July 1, 2012; January 1, 2013.

**Explanation of State Expenditures:** *Electronic Communications:* The bill potentially reduces travel and meeting expenses for the governing bodies of state public agencies by allowing members of the body to meet using electronic communications. The cost savings would depend on the number of meetings held by the body, whether the members are reimbursed for their travel and meeting expenses, the distance from the meeting site for the member not meeting in person, and the number of members who choose to forego meeting in person. Public agencies may incur minimal one-time costs to adopt a policy to allow meetings by electronic communication.

*Change to Annual Meeting Schedule:* The bill both increases and decreases the number of meetings required by various committees on an annual basis. The details concerning each committee with a change in schedule is shown in the table below.

<b>Code Cite Committee</b>	<b>Proposed Statutory Schedule</b>	<b>Current Statutory Schedule</b>	<b>Other Information</b>
4-12-1-10 Budget Committee	Remove requirement to meet monthly after July.	At least once in two- month period after sine die and beginning in July, once a month and at call of chair	Minutes are available for eight meetings in 2010 and three meetings in 2011.
4-15-1.5-5 State Employees Appeals Commission	Annually	Monthly	Members receive \$50 per meeting and mileage. There are five members, and three or four members are in attendance.
5-2-6-16 Commission for Drug Free Indiana	Quarterly	Monthly	No information was available for this commission.
5-13-12-2 Board for Depositories	Semiannually	Quarterly	Members receive travel expense reimbursement only. There are nine members, and usually eight are in attendance.

*Valuable Metal Dealers:* The bill potentially reduces supply and distribution costs for the Indiana State Police (ISP) by eliminating requirements for paper distribution of valuable metal lists and forms, and instead replacing those with information posted on the ISP website.

*Electronic Media:* There is no fiscal impact to adding electronic media to the definition of records for the purposes of the State Commission on Public Records. The Commission already receives electronic data and will have to expand its electronic data storage capabilities in any event.

*Department of Public Works (DPW):* The DPW estimates annual cost savings of \$600 annually from not having to solicit for public works projects by sending notices in the mail to known potential bidders or by posting notices on public bulletin boards in its offices.

*Public Records and Open Door Laws:* This bill could increase expenditures of any public agency if any officer or management-level employee of that agency intentionally violates the law by:

- (1) Failing to give proper notice of a regular meeting, special meeting, or executive session.
- (2) Taking final action outside a regular meeting or special meeting.
- (3) Participating in a secret ballot during a meeting.
- (4) Discussing in an executive session subjects not eligible for discussion in an executive session.
- (5) Failing to prepare a memorandum of a meeting required by IC 5-14-1.5-4.
- (6) Participating in at least one gathering of a series of gatherings under IC 5-14-1.5-3.1.
- (7) Denying a person's request for inspection or copying of a public record if the public record is subject to disclosure.

(8) Charging a copying fee that exceeds the amount permitted.

The bill allows a court to assess a civil penalty of not more than \$100 for the first violation, and not more than \$500 for each additional violation of the provisions above if the plaintiff obtained an advisory opinion from the Public Access Counselor. Civil penalties imposed against a public agency will be paid from the agency's budget. The penalties will be deposited in the Education Fund established by this bill. The amount of penalties that will be collected is indeterminable because it will depend upon the number of violations and the amount of the penalty imposed as determined by the courts.

**Background Information** - Under IC 5-14-1.5-2 "public agency" means the following:

(1) Any board, commission, department, agency, authority, or other entity, by whatever name designated, exercising a portion of the executive, administrative, or legislative power of the state.

(2) Any county, township, school corporation, city, town, political subdivision, or other entity, by whatever name designated, exercising in a limited geographical area the executive, administrative, or legislative power of the state or a delegated local governmental power.

(3) Any entity which is subject to either:

(A) budget review by either the Department of Local Government Finance or the governing body of a county, city, town, township, or school corporation; or

(B) audit by the State Board of Accounts.

(4) Any building corporation of a political subdivision of the state of Indiana that issues bonds for the purpose of constructing public facilities.

(5) Any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency, except medical staffs or the committees of any such staff.

(6) The Indiana Gaming Commission established by IC 4-33, including any department, division, or office of the commission.

(7) The Indiana Horse Racing Commission established by IC 4-31, including any department, division, or office of the commission.

**Explanation of State Revenues:** *Education Fund for Public Access Counselor Program:* Revenues from a public agency and/or individual violating the provisions of this bill will be distributed into the Education Fund established by this bill. The amount of revenue is indeterminable and will depend upon the number of violations and the amount of the penalty imposed as determined by the courts.

The nonreverting Education Fund established under the bill is required to be administered by the Treasurer of State and used to pay the expenses of administering the fund and nonrecurring administrative expenses.

**Explanation of Local Expenditures:** *Electronic Communication:* A member of a governing body of a public agency of a political subdivision who participates in a meeting by electronic communication cannot participate in any final action and may not be counted as present, unless specifically authorized by statute.

*Public Records and Open Door Laws:* Local units and agencies are included in the definition of public agency. [Please refer to *Explanation of State Expenditures* for an explanation of this bill's impact on public agency expenditures.]

*Request for Notices:* The bill provides that if a local government agency adopts a policy to provide to do so, it shall provide notice to anyone (other than news media) that makes an annual request for notice by: (1)

transmitting the notice by electronic mail (if the agency has the capacity to send electronic mail); or (2) posting the notice on the agency's Internet web site (if the agency has an Internet web site). Any increase in expenditures should be minimal.

**Explanation of Local Revenues:**

**State Agencies Affected:**

**Local Agencies Affected:**

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